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6 IN THE UNITED STATES DISTRICT COURT
7 FOR THE DISTRICT OF ARIZONA

8 Calvin James,) No. CV 04-2983-PHX-MHM (VAM)
9 Plaintiff,) **ORDER TO SHOW CAUSE**
10 vs.)
11 Joseph Arpaio, et al.,)
12 Defendants.)
13 _____)

14 Plaintiff Calvin James, formerly confined in the Echo Unit of the Arizona State Prison
15 Complex in Tucson, Arizona, filed a *pro se* 42 U.S.C. § 1983 action.

16 **A. Motion to Proceed *In Forma Pauperis***

17 Because Plaintiff was a prisoner at the time he filed his Complaint, he became
18 obligated to pay the \$150.00 civil action filing fee. See Taylor v. Delatoore, 281 F.3d 844,
19 847 (9th Cir. 2002) (providing that “[u]nder the PLRA, all prisoners who file IFP civil
20 actions must pay the full amount of the filing fee.”); 28 U.S.C. § 1915(b)(1). He applied to
21 proceed *in forma pauperis* without *prepayment* of the fees. (Doc. #5). His motion will be
22 granted.

23 Normally, after granting leave to proceed *in forma pauperis*, the Court orders the
24 inmate’s custodian to periodically withdraw funds from the inmate’s account according to
25 a statutory formula in 28 U.S.C. § 1915(b)(2) until the \$150.00 filing fee is paid in full.
26 Plaintiff, however, no longer has an inmate trust account. Soon after filing his Complaint,
27 he submitted a change of address to a private residence, showing that he had been released
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1 from jail. See Dkt. #6. Consequently, the \$150.00 civil action filing fee is now due in full
 2 unless Plaintiff can show good cause within **thirty days** why he should not be required to
 3 pay it immediately.

4 To comply, Plaintiff must file a pleading entitled “Response.” The response must be
 5 made under penalty of perjury. See 28 U.S.C. § 1746 (the oath requirement may be satisfied
 6 when a person declares under penalty of perjury that the submission is true and correct, and
 7 signs and dates the statement). Plaintiff must *either* (1) identify his date of release and
 8 promise to pay the \$150.00 filing fee within 120 days of the date of his release, or (2) show
 9 good cause why he should not be required to pay the fee within 120 days. If Plaintiff
 10 chooses to demonstrate good cause, he must describe his current financial condition in detail,
 11 including his sources of income, whether he is employed, and any liabilities he may have.
 12 Of course, Plaintiff may simply submit the \$150.00 filing fee in lieu of a response.

13 **B. Motion to Quash**

14 Plaintiff filed a “motion to quash” his filing fee. (Doc. #4). Plaintiff filed an initial
 15 *pro se* § 1983 action, James v. Arpaio, CV-03-2111-PHX-JWS (VAM), arguing that his
 16 constitutional right to access the courts had been denied. This Court dismissed Plaintiff’s
 17 Complaint with leave to amend. Plaintiff failed to timely amend his Complaint, and in June
 18 2004, it was dismissed without prejudice.

19 In December 2004, Plaintiff filed the instant action, raising the identical access to
 20 court claims. (Doc. #1). Plaintiff argues in his motion to quash that he attempted to file an
 21 amended complaint in his initial § 1983 action, but could not do so due to this Court issuing
 22 an order with the wrong name and the wrong case number. Thus, Plaintiff argues, because
 23 the instant action is the same as the one mistakenly dismissed, he should not have to pay a
 24 second filing fee. Plaintiff seeks to have the amount he paid in the first action, \$124.00,
 25 applied to the instant case.

26 “The clerk of each district court shall require the parties instituting any civil action,
 27 suit or proceeding in such court, whether by original process, removal or otherwise, to pay
 28 a filing fee.” 28 U.S.C. § 1914; see also 28 U.S.C. § 1915(b) (providing that a prisoner

bringing an action *in forma pauperis* is required to pay the filing fee). Plaintiff was assessed a filing fee for his initial § 1983. When that action was dismissed, Plaintiff chose to file a second action raising the identical claims. Plaintiff is required to pay the filing fee for both actions, even though the claims are identical. Accordingly, Plaintiff's motion to quash will be denied.

C. Motion for Case Status

Plaintiff also requested that he be informed of the status of his case. (Doc. #6). His motion will be denied as unnecessary as the status of his case is addressed in the instant order.

D. Rule 41 Warning

Plaintiff should take notice that if he fails to timely comply with every provision of this Order, or any order entered in this matter, this action will be dismissed pursuant to Rule 41(b) of the Federal Rules of Civil Procedure. See Ferdik v. Bonzelet, 963 F.2d 1258 (9th Cir. 1992) (district court may dismiss action for failure to comply with any order of the court). In addition, until the method of collection of the filing fee is resolved, the Court will not screen his action under 28 U.S.C. § 1915A.

IT IS THEREFORE ORDERED THAT:

(1) Plaintiff's motion to proceed *in forma pauperis* (Dkt. #5) without *prepayment* of the civil action filing fee is **granted**.

(2) Plaintiff shall have **thirty (30) days** from the date this Order is filed to either pay the \$150.00 filing fee in full or to respond as described in this Order.

(3) Plaintiff's Motion to Quash (Doc. #4) is **denied**.

(4) Plaintiff's Motion for Case Status (Doc. #6) is **denied as unnecessary**.


(5) At all times during the pendency of this action, Plaintiff shall immediately advise the Court and the United States Marshal of any change of address and its effective date. Such notice shall be captioned "NOTICE OF CHANGE OF ADDRESS." The notice shall contain only information pertaining to the change of address and its effective date. Plaintiff shall serve a copy of the notice on all opposing parties. The notice shall not include any

1 motions for any other relief. Failure to file a Notice of Change of Address may result in the
2 dismissal of the action for failure to prosecute pursuant to Rule 41(b) of the Federal Rules
3 of Civil Procedure.

4 (6) The Clerk of Court is directed to enter a judgment of dismissal of this action
5 without prejudice and without further notice if Plaintiff fails to comply.

6 DATED this 8th day of January, 2006.

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Mary H. Murgula
United States District Judge